

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 415 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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SOHAN CHATURVEDI

Versus

C R SHAH, SUPERINTENDENT OF CENTRAL EXCISE

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Appearance:

MR RS SANJANWALA for Petitioner

MR MUKESH R SHAH for Respondent No. 1

MR BY MANKAD, APP for Respondent No. 9

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CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 07/10/1999

ORAL JUDGEMENT

Leave to amend. The petitioner is permitted to delete respondent nos. 2 to 8 as they are not necessary parties.

Heard learned counsel Mr. Sanjanwala for the petitioner, learned Standing Counsel Mr. M.R .Shah for respondent no.1 and learned APP Mr. B.Y. Maknad for Respondent no.9 - State of Gujarat. The petitioner has

mainly prayed the following relief in para-18 of the petition:-

"18. In the above premises, the petitioner most respectfully prays as under :-

(A) xxx xxx xxx xxx

(B) This this Hon'ble Court be pleased to examine the validity, legality and propriety of the impugned order passed by the learned Additional Chief Metropolitan Magistrate in Criminal Case No.441 of 1987 issuing process against the petitioner and be pleased to quash and set aside the same.

(C) to (F) xxx xxx xxx xxx "

While arguing, Mr. Sanajanwala, learned counsel appearing for the petitioner has submitted that the case of the petitioner is covered by the judgment of this Court in the case of Narottam B.Shah v/s C.R. Shah, Supdt. of Central Excise, delivered in Spl. Criminal Application No. 271/94 dated 7.4.1998 ( Coram: S.D.Dave, J ). It is submitted that the petitioner is the Chartered Accountant and at the relevant point of time, was in the employment of the firm of Chartered Accountants namely M/s Chaturvedi & Shah. This firm had undertaken the auditing of respondent company's accounts. Mr. Sanjanwala has successfully argued that the petitioner has been wrongly dragged into criminal proceedings and, therefore, he is compelled to approach this Court. The order passed by the learned Addl. Chief Metropolitan Magistrate, Ahmedabad in Criminal Case No. 441/87 issuing process against the petitioner is wrong and not in accordance with law, therefore, this Court should interfere by exercising its inherent powers under sec. 482 of the Cr.P.Code. In the decision in the case of Narottam.B. Shah (Supra), the Court has made following observations:-

" Thus, it appears very clearly that, the Court below was not justified in, prima facie, coming to the conclusion that the material presented before the said Court even on a prima facie assessment, had shown the gist of the offence of abetment.

Learned Counsel Mr. Gehani who appears for the Department, has placed heavy reliance upon the Supreme Court pronouncement in SMT. NAGAWWA, APPELLANT V. VEERANNA SHIVALINGAPPA KNOJALGI AND OTHERS, RESPONDENTS, AIR 1976 SC 1947. It was a case of revision before the High Court

and the question was regarding the validity or otherwise of the issuance of the process after the inquiry under Section 202 of the Code of Criminal Procedure, 1974. It has been said by the Supreme Court that, at the stage of issuing the process, the Magistrate is mainly concerned with the allegations made in the complaint or the evidence led in support of the same and he is only to be prima facie satisfied whether there are sufficient grounds for proceeding against the accused. It is also said that, it is not the province of the Magistrate to enter into a detailed discussion of the merits or the demerits of the case nor can the High Court go into this matter in its revisional jurisdiction which is a very limited one. The principle laid down by the Supreme Court thus is that, at the stage of issuing process, the Magistrate is mainly concerned with the allegations made in the complaint and that he is required only to be, prima facie, satisfied, but in the instant case, it appears that, while issuing the process, looking to the allegations made in the complaint as extracted above, the learned Magistrate could not have, prima facie, satisfied himself for the issuance of the process against the present petitioner. Reliance was also placed by learned Counsel Mr. Gehani, on the Supreme Court pronouncement in STATE OF HARYANA AND OTHERS, APPELLANTS v. CH. BHAJAN LAL AND OTHERS, RESPONDENTS, AIR 1992 SC 604. It was a case in which there were clear allegations in the complaint constituting the cognizable offence. It was held by the Supreme Court that the quashing of the FIR by the High Court while acting under Article 226 of the Constitution of India was not justified. But, this decision and the previous one on which the reliance has been placed by the learned Counsel Mr Gehani for the Department, would not assist in furtherance of the case of the Department because, the earlier decision, namely Smt. Nagawwa (supra) makes it clear that at the stage of issuing process, the Magistrate is mainly concerned with the allegations made in the complaint or the evidence led in support of the same and he is only to be prima facie satisfied whether there are sufficient grounds for proceeding against the accused and it is not discussion of the merits or de-merits of the case nor can the High Court go into this matter in its revisional jurisdiction

which is a very limited one. Examining the facts of the case on hand, in light of the above said say of the Supreme Court, no case appears to have been made out against the present petitioner as alleged by the complainant."

I am in agreement with the reasoning given by this Court in the above-referred judgment. Even otherwise, unless this Bench differs, the said judgment is binding.

Learned Counsel Mr. M.R.Shah, in response to the query raised by this Court, has fairly submitted that ratio propounded in the above-referred judgment is applicable to the facts of the present case. The facts of both the case are similar and allegations made are of identical nature. Hence, without going into further discussion and following the aforesaid decision of this Court, this Spl.Criminal Application requires to be allowed.

For the reasons aforesaid, Spl. Criminal Application is allowed. The impugned order passed by the learned Addl. Chief Metropolitan Magistrate, Ahmedabad in Criminal Case No. 441 of 1987 is hereby quashed and set aside.

Rule is made absolute.

06.10.1999 [ C.K. BUCH, J ]

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